BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 5433 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE

In the Matter of:

PAUL M. JACKSON (Claimant)
S.S.A. No. [redacted]

NORTH AMERICAN AVIATION, INC.
Los Angeles Airport
(Appellant-Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-353

FORMERLY
BENEFIT DECISION
No. 5433

The above-named employer on May 13, 1949, appealed from the decision of a Referee (LA-21796) which held that the claimant was not subject to disqualification under Section 58(a)(1) of the Unemployment Insurance Act /now section 1256 of the Unemployment Insurance Code/.

Based on the record before us, our statement of fact, reason for decision, and decision are as follows:

STATEMENT OF FACTS

Prior to filing a claim for benefits the claimant was last employed for eight months as a riveter by the employer herein at a wage of $1.15 per hour. This employment terminated on February 18, 1949, under circumstances hereinafter set forth.

On March 7, 1949, the claimant registered for work and filed a claim for benefits in the Compton office of the Department of Employment. On March 25, 1949, the Department issued a determination which disqualified the claimant for five weeks commencing March 7, 1949, based upon a finding that he had left his most recent work voluntarily without good cause within the meaning of Section 58(a)(1) of the Unemployment Insurance Act /now section 1256 of the Unemployment Insurance Code/. The claimant appealed and a Referee reversed the determination.

The claimant last worked for the employer on February 16, 1949, and was scheduled to work his regular shift the following day when he became seriously ill and was taken to a hospital where he underwent an emergency operation. On February 18, the

claimant's mother telephoned the employer to explain the circumstances surrounding her son's absence and to request that any wages then due him be made immediately available to take care of expenses arising in connection with his illness. The mother's call was routed to various officials of the employer's plant and as a result of her conversations with these officials she gained the impression that in order to make those wages immediately available it would be necessary for the claimant to resign or to obtain a clearance through the medical department of the employer's Inglewood plant. The claimant's mother explained that she did not have authority to terminate her son's employment and that she could not personally contact the medical department because of her son's condition. The claimant's mother finally instructed the employer to terminate the claimant's services provided the employer's records would show the reason for the resignation. On February 18, 1949, the employer mailed a letter to the claimant advising that he was considered to have resigned voluntarily effective February 18, 1949, at his mother's request. It was further stated that before a check could be issued for wages due it would be necessary to turn in his badge, identification card, and tool checks for final clearance. On February 20, 1949, the claimant was released from the hospital, but was not physically able to return to work until at least February 28, 1949.

On February 24, 1949, the claimant visited the employer's plant for the purpose "of terminating my resignation officially" because he believed the employer had acted unjustifiably in terminating the employment relationship. The claimant did not request reinstatement or that he be granted a leave of absence until he was well enough to return to work. The employer was uncertain as to whether favorable action would have resulted from such a request. The collective bargaining agreement in effect between the claimant's union and the employer provides that a leave of absence without pay is granted upon request of the employee, where a sufficient reason is given, upon written application of the employee or by his designated representative. A grievance procedure also is provided for in the agreement. The claimant's representative at the Referee's hearing, a union official, testified that he inquired into the possibility of filing a grievance for the claimant but was told that claimant "had waited too long."

REASON FOR DECISION

The employer contends in this case that the claimant's failure to request reinstatement when he was well enough to do so constituted a ratification of his mother's previously unauthorized act and that he is, therefore, subject to disqualification under Section 58 (a)(1) of the Unemployment Insurance Act /now section 1256 of the Unemployment Insurance Code/ While it is true that agency may be created by ratification (C.C. 2307), which will result from acceptance by the principal of the benefits of the acts of the purported agent, it is well established by California

judicial interpretation that ratification is possible only when the person whose unauthorized act is to be accepted purported to act as agent for the ratifying party (Watkins v. Clemmer (1933) 129 C.A. 567, 19 P. (2d) 303; Schweitzer v. Bank of America (1941) 42 C.A. (2d) 536, 109 P. (2d) 441; C.C. 2312; Restatement of the Law of Agency, secs. 85 and 87).

In the instant case, there can be no doubt that the claimant's mother did not purport to act as agent for the claimant in terminating the employment relationship. She purported to act for the claimant only to the extent of obtaining such wages as were allegedly due and owing to him for services rendered and specifically informed the employer of her lack of authority to resign on his behalf. Further, she made it clear that the resignation was conditional and the employer was fully aware of the reason for the request. Nevertheless, the employer did effectuate an unequivocal termination on February 18, 1949, although fully aware that the claimant was hospitalized and unable to act for himself. This unilateral act by the employer, taken at a time when the claimant was admittedly unable to work or to take any action to preserve the employer-employee relationship, in our opinion constituted a discharge or lay-off for non-disqualifying reasons under Section 58 (a)(1) of the Unemployment Insurance Act [now section 1256 of the Unemployment Insurance Code]. Furthermore, if the circumstances surrounding the claimant's termination from employment were construed to constitute a voluntary leaving of work it appears that good cause existed for the leaving because of the claimant's illness. (See Benefit Decision 5288-10812.)

It is our further opinion that the claimant's failure to subsequently request reinstatement or protest the employer's action through established grievance procedures is immaterial as far as having any effect on his potential eligibility for benefits. The employer's action was final, the employment relationship was terminated on February 18, 1949, and the claimant was not obligated to pursue the matter any further under the circumstances of this case.

DECISION

The decision of the Referee is affirmed. Benefits are allowed provided the claimant is otherwise eligible.

Sacramento, California, July 21, 1949.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

PETER E. MITCHELL (Absent)

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 5433 is hereby designated as Precedent Decision No. P-B-353.

Sacramento, California, June 2, 1977.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

HARRY K. GRAFE

RICHARD H. MARRIOTT

DISSENTING - Written Opinion Attached

CARL A. BRITSCHGI

DISSENTING OPINION

I dissent.

As pointed out in my dissent to P-B-352, I do not believe the majority members should elevate to precedent status cases which have been outdated since the codification of the Unemployment Insurance Code in 1953.

The factual circumstances considered in the instant case are also peculiar to the nominal parties and in my seven years' tenure upon this Board such issue has not been presented. I do not believe that such isolated issue should be elevated to a precedent decision, particularly where a specific finding as to a voluntary leaving or a discharge has been skirted.

I accordingly oppose the action proposed by the majority members of this Board.

CARL A. BRITSCHGI